IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.901 OF 2005

Mr.Jayram G.Shetty .. Petitioner

versus

Smt.Meenakshi Shankaran & anr.. Respondents

Mr.P.K.Dhakephalkar i/b Mr.S.M.Shetty for Petitioner

None for Respondents

CORAM : D.G.KARNIK, J

DATED : 27th January, 2006

P.C.

1. By this petition, the petitioner challenges the order dated 31st July, 2004 passed in appeal by the appellate bench of the Small Causes Court, Mumbai and the subsequent order dated 2nd November, 2004 passed by the Small Causes Court, Mumbai.

2. In a suit for eviction filed against the respondent no.2 tenant, the petitioner obtained a decree for possession. In execution proceedings the respondent no.1, who is the mother of the respondent no.2, obstructed the execution of the

decree claiming that she was the tenant. Executing Court overruled the said objection. The respondent no. 1 therefore filed an appeal bearing No.299 of 2004. By the impugned order dated 31st July, 2004 the appellate bench remanded the matter back to the executing Court. Thereafter the executing Court reheard the matter and held that the objection raised by the respondent no. 1 should be treated as an obstruction and the petitioner was given liberty to take out proceedings for removal of the obstruction.

3. When the execution of a decree is obstructed by a stranger or a third person who claims to have an independent right, proceedings for removal of obstruction must be taken out. No fault therefore can be found with the impugned orders.

4. Learned counsel for the petitioner however, submits that hearing of the proceedings for removal of the obstructonists should be expedited. I notice that in the impugned order dated 2nd November, 2004 itself the learned Judge has stated that the proceedings are expedited. As such, there is no need for issuance of further directions for expedition as it is hoped that the executing Court would follow its own directions of

expeditious hearing.

5. With these observations, petition is dismissed summarily.

(D.G. KARNIK, J)